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UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

**KILLER BURGER, INC.,** an Oregon  
corporation,

Plaintiff,

v.

**ROCK AND ROLL CHILI PIT, INC.,** an  
Oregon corporation; **MARK MCCRARY** and  
**ROBIN MCCRARY,** husband and wife,

Defendant.

**Case No.** \_\_\_\_\_

**KILLER BURGER, INC.’S MOTION FOR  
TEMPORARY RESTRAINING ORDER  
AND PRELIMINARY INJUNCTION**

Pursuant to Fed. R. Civ. P. 65(a)

**ORAL ARGUMENT REQUESTED**

**LOCAL RULE 7-1 CERTIFICATION**

Counsel for plaintiff Killer Burger, Inc. (“Killer Burger”) gave notice of this Motion and supporting documents to Defendants by mailing copies of the motion to Defendants’

principal place of business, and to Defendant Mark McCrary and Robin McCrary at the address registered with the Secretary of State (the McCrarys are, respectively, the President and registered agent, and Secretary, of Defendant Rock and Roll Chili Pit (“RRCP”)). Killer Burger will also serve a copy of this motion and supporting documents via process server along with a copy of the Complaint and Summons immediately upon filing.

Killer Burger, through counsel, will also promptly confer with counsel for Defendants as soon as they identify one, and will notify the Court in the unlikely event that Defendants consent to entry of a temporary restraining order.

### **MOTION**

Pursuant to FRCP 65, and the Court’s inherent authority, Killer Burger respectfully moves this Court for a temporary restraining order and preliminary injunction against Defendants. As detailed in the supporting memoranda filed herewith, Defendants are selling hamburgers in clear violation of Killer Burger’s incontestable rights to the “Epic” and “Black Molly” trademarks. And Defendants are doing so in a blatant, bad faith attempt to trade on Killer Burger’s goodwill and to profit wrongfully from consumers’ confusion.

Killer Burger is entitled to a temporary restraining order because it has established, as set forth in the supporting memorandum and declarations, that (1) it is likely to succeed on the merits of its trademark infringement claim and its breach of contract claim, (2) it is suffering irreparable harm to its goodwill and reputation and will continue to suffer harm absent injunctive relief, (3) the balance of hardships tips sharply in Killer Burger’s favor, and (4) a temporary restraining order protecting consumers from confusion serves the public interest.

Killer Burger therefore respectfully moves this Court for the following Orders:

1. Granting an immediate restraining order prohibiting Defendants, their officers, agents, servants, employees attorneys, and any persons acting in concert or participation with the same, who receive actual notice of the order by personal service or otherwise, from producing, preparing, marketing, advertising, promoting or offering for sale the “Epic” and “Black Molly” hamburgers; and
2. For a preliminary injunction continuing the relief from the temporary restraining order during the pendency of this action.

The above motions are based on the Complaint filed herewith, the declaration of Thomas Southard, and the memorandum in support filed herewith.

DATED this 4<sup>th</sup> day of August, 2017.

s/ S. Ward Greene

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